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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
YAVAPAI COUNTY, ARIZONA  
FOR THE COUNTY OF YAVAPAI

2011 DEC -6 AM 9:58  
SANDRA K. HARKHAM, CLERK  
*Jacqueline Harkham*

STATE OF ARIZONA, )  
 )  
Plaintiff, )  
 )  
vs. ) Case No. V1300CR201080049  
 )  
JAMES ARTHUR RAY, )  
 )  
Defendant. )  
\_\_\_\_\_ )

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE WARREN R. DARROW  
TRIAL DAY SIXTY  
JUNE 22, 2011  
Camp Verde, Arizona

**ORIGINAL**  
REPORTED BY  
MINA G. HUNT  
AZ CR NO. 50619  
CA CSR NO. 8335

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
2 FOR THE COUNTY OF YAVAPAI  
3

4 STATE OF ARIZONA, )  
5 Plaintiff, )  
6 vs ) Case No V1300CR201080049  
7 JAMES ARTHUR RAY, )  
8 Defendant )  
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14 REPORTER'S TRANSCRIPT OF PROCEEDINGS  
15 BEFORE THE HONORABLE WARREN R. DARROW  
16 TRIAL DAY SIXTY  
17 JUNE 22, 2011  
18 Camp Verde, Arizona  
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24 REPORTED BY  
25 MINA G HUNT  
AZ CR NO 50619  
CA CSR NO. 8335

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1 Proceedings had before the Honorable  
2 WARREN R. DARROW, Judge, taken on Wednesday,  
3 June 22, 2011, at Yavapai County Superior Court,  
4 Division Pro Tem B, 2840 North Commonwealth Drive,  
5 Camp Verde, Arizona, before Mina G. Hunt, Certified  
6 Reporter within and for the State of Arizona.  
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1 APPEARANCES OF COUNSEL:

2 For the Plaintiff:

3 YAVAPAI COUNTY ATTORNEY'S OFFICE  
4 BY: SHEILA SULLIVAN POLK, ATTORNEY  
5 BY: BILL R. HUGHES, ATTORNEY  
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8

9 For the Defendant:

10 THOMAS K. KELLY, PC  
11 BY: THOMAS K. KELLY, ATTORNEY  
12 425 East Gurley  
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15 MUNGER TOLLES & OLSON, LLP  
16 BY: LUIS LI, ATTORNEY  
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22 MUNGER TOLLES & OLSON, LLP  
23 BY: MIRIAM L. SEIFTER, ATTORNEY  
24 560 Mission Street  
25 San Francisco, California 94105-2907

4  
1 P R O C E E D I N G S

2 THE COURT: The record will show the presence  
3 of Mr. Ray, Mr. Kelly and Ms. Do, representing  
4 Mr. Ray. Ms. Polk is here for the state.  
5

6 I have a written motion at this time.  
7 The state can respond to that in writing, but I'm  
8 not going to have an oral argument on that at this  
9 time. But I do have the written motion.  
10

11 Mr. Kelly.

12 MR. KELLY: Thank you, Judge. We would submit  
13 it.

14 THE COURT: Okay. And then I also have  
15 provided a question from the jury. Again, it's  
16 really an administrative type question. We'd like  
17 to have a list of exhibits. And so the clerk's  
18 office now is working on a sanitized list so it  
19 doesn't show who offered it or when, only a list of  
20 the admitted exhibits. I'm not giving it to them  
21 until both sides get a chance to look at it and if  
22 there is any objection to it. That's being worked  
23 on right now.

24 MR. KELLY: Thank you.

25 THE COURT: Anything else?

MR. KELLY: No.

MS. POLK: No, Your Honor. Thank you.

1 Your Honor.

2 THE COURT: Yes.

3 MS. POLK: I'm sorry. There was another issue  
4 that we had brought up. We actually sent an email  
5 to the Court and counsel. It's the question from  
6 Dateline for copies of some photographs.

7 THE COURT: I think I saw something to that  
8 effect, Ms. Polk. What's outstanding on that?

9 MS. POLK: What's outstanding is just the  
10 Court's permission. Apparently Dateline would like  
11 color photographs in a digital format. What they  
12 can get from the clerk's office is black and white.  
13 Somebody then has -- maybe someone from the clerk's  
14 office or I'm not sure. Anyway, for them to us.  
15 And we do have the color photographs.

16 I just didn't want to release anything if  
17 it was going to be in violation of the Court's gag  
18 order or somehow be perceived by the defense as  
19 improper conduct.

20 THE COURT: Are these admitted exhibits they  
21 want?

22 MS. POLK: Yes.

23 THE COURT: Does the defense have any  
24 position?

25 MR. KELLY: No.

1 THE COURT: It's ordered they may be released  
2 by the county attorney. Thank you.

3 MS. POLK: Thank you.

4 (Recess.)

5 THE COURT: The record will show the presence  
6 of Mr. Ray, represented by Mr. Kelly, Mr. Li,  
7 Ms. Do. Ms. Polk here for the state.

8 I have the proposed exhibit list for the  
9 jury. The jury has requested this. And I would  
10 imagine they want it so that they can locate  
11 things. And with the redactions proposed by the  
12 defense, that really wouldn't be a lot of  
13 assistance. I think it's something that really has  
14 to be agreed upon. If not, they just don't get a  
15 list.

16 Ms. Polk.

17 MS. POLK: Your Honor, I agree with the Court  
18 that taking away the descriptions of the  
19 photographs is less helpful to the jury. On the  
20 other hand, if that's what the defense will only  
21 agree to, the state would have no objection.

22 THE COURT: Then I'm going to ask the clerk to  
23 make a list that conforms to the redactions  
24 suggested by the defense and then just ask both  
25 sides to please look it over very carefully after

1 it was prepared.

2 MS. POLK: Your Honor, I was only speaking  
3 about the photographs.

4 THE COURT: I thought you were -- go ahead.

5 MS. POLK: I was specifically referencing  
6 the -- because the defense had gone through with  
7 each photograph and had stricken the description.

8 THE COURT: Right.

9 MS. POLK: Again, I don't believe that's very  
10 helpful to the jury. But if that's the defense's  
11 position, we would not object.

12 THE COURT: Okay. And then what about the  
13 other --

14 MS. POLK: Exhibit 148, the defense had  
15 written in, Sedona. So it is a summary of the  
16 Sedona weather conditions. And they wrote in,  
17 summary of Sedona airport. Actually, we pulled the  
18 exhibit. And the exhibit is -- this is 148. It  
19 has weather conditions at the Sedona Airport, and  
20 then it also has weather conditions at the  
21 Cottonwood Public Works Department. So it would  
22 not be accurate to -- actually, it's not accurate  
23 to call it Sedona either.

24 THE COURT: What's going on here, it's,  
25 basically, a means of arguing the case. I'm just

1 not going to have that. If there is not an  
2 agreement on what goes in, then they don't get a  
3 list. That's how it needs to work. Essentially,  
4 it becomes some kind of a hearsay document where  
5 one side or another argues there is some advantage.

6 I mean, summary of weather conditions or  
7 whatever. But to put airport in there, that's an  
8 aspect of argument in the case. And this was to  
9 assist them in finding exhibits. If we can't have  
10 an agreement, then they're not going to get a list.

11 MS. POLK: And, Your Honor, that's my point.  
12 I think that it should say, summary of weather  
13 conditions, and not say Sedona Airport, because it  
14 is Cottonwood as well as Sedona Airport.

15 THE COURT: What about all the other  
16 redactions, Ms. Polk?

17 MS. POLK: The only other issue that the state  
18 has is Exhibit 742. The defense had written, audio  
19 clip, organophosphates. And the state had  
20 suggested audio clip of -- I just don't think it  
21 should say, organophosphates, Your Honor, as if  
22 organophosphates was a proven fact. It should be  
23 audio clip of -- from dining hall, October 8, or  
24 something along those lines, or just audio clip.

25 THE COURT: Okay. Then anything else?

1 MS. POLK: Your Honor, exhibits 899 through  
2 902, it says, paint can. And the state suggested  
3 that it say, sample of sweat lodge coverings, so  
4 the jury doesn't need to open the paint cans to  
5 remember what's in it. They are now sealed paint  
6 cans.

7 THE COURT: The jurors will have gloves. If  
8 they want to open something, they can.

9 MS. POLK: And I understand that. But I'm  
10 just suggesting why don't we say on it, paint can,  
11 sample of sweat lodge coverings, so that they  
12 remember what's in the paint cans?

13 THE COURT: I'm just noting these things.  
14 Anything else, then, working off the defense list,  
15 Ms. Polk?

16 MS. POLK: No, Your Honor.

17 THE COURT: Mr. Kelly?

18 MR. KELLY: Judge, our concern is obvious, and  
19 it's reflected by this conversation. The exhibits  
20 should speak for themselves and not reflect any  
21 opinion as to the quality or the contents of the  
22 exhibit. And what we were trying to do is simply  
23 provide an accurate list to help them categorize.

24 As an example, the weather conditions, in  
25 fact, were the weather conditions from the Sedona

1 Airport. We're not making an argument that that's  
2 what the exhibit is. We would object to simply  
3 having it reflect weather conditions because that's  
4 not accurate.

5 THE COURT: I don't have a quarrel. I  
6 understand --

7 MR. KELLY: If the exhibit is both the Sedona  
8 and Cottonwood Airport, that's what item 148 should  
9 reflect. In regards to the photographs, the  
10 descriptors provided by both sides as to what our  
11 opinion that they depict were deleted.

12 In regards to 742, our proposal from the  
13 State of Arizona reads, clip of unknown male played  
14 during defense opening. That's clearly a comment  
15 on the evidence and should not be allowed. So if  
16 742, the way it's currently described, should say,  
17 audio clip. That's what it is. It does contain  
18 the words "organophosphates," which would help the  
19 jury identify that particular clip.

20 Then, finally, in regards to the paint  
21 cans, the only thing in those paint cans were the  
22 coverings. And I don't see any reason to  
23 supplement what's in the exhibit. The -- in 742  
24 what may be helpful -- if you're going to  
25 accurately depict what the audio clip says, it

1 would be carbon monoxide and/or organophosphates.  
2 If there is a concern about the content of the  
3 exhibit, perhaps providing the date, as suggested  
4 by Ms. Polk, and the location, the dining hall.  
5 That would be an adequate descriptor without making  
6 a comment on the evidence.

7 THE COURT: I understand that there can be  
8 descriptions. I would want to have as much  
9 description to let them find something. It can't  
10 be inaccurate and it can't be a form of argument,  
11 either way.

12 Well, I would suggest, and I'm looking at  
13 148, maybe it ought to just say, summary. Leave it  
14 at that. And then they can look through it and --

15 The exhibit related to the airport  
16 weather conditions, Ms. Polk, it can say that. But  
17 I want to give them something here.

18 MS. POLK: Your Honor, I think I heard  
19 Mr. Kelly agree that it could say, summary. In  
20 fact, I should provide you with a copy, Your Honor.  
21 The Sedona Airport is page 1, and then the  
22 Cottonwood Public Works Department is page 2 of the  
23 summary. I'm sorry. My suggestion would be to  
24 either say, summary of weather conditions, or say,  
25 summary of Sedona Airport and Cottonwood Public

1 Works Department.

2 MR. KELLY: We would agree to the latter,  
3 Judge.

4 THE COURT: So summary of Sedona Airport  
5 weather conditions and --

6 MS. POLK: Cottonwood Public Works Department  
7 weather conditions.

8 THE COURT: And then I made a check mark by  
9 "other things."

10 MR. KELLY: I believe 742 is the other exhibit  
11 in issue.

12 THE COURT: I have that marked. I also -- 742  
13 and then the paint cans. 742 -- okay. Is there  
14 some agreed language? Audio clip, some neutral  
15 description? Somebody propose something.

16 Ms. Polk.

17 MS. POLK: Your Honor, the state's suggestion  
18 is audio clip, 10/8/09, dining hall.

19 MR. KELLY: That's good, Judge.

20 THE COURT: Okay. And then the paint cans, I  
21 think, people will know. I don't think that's  
22 something that's going to be puzzled about.

23 What were you suggesting on that,  
24 Ms. Polk?

25 MS. POLK: Your Honor, we're fine. I had

1 thought that some dirt was in one of the paint  
2 cans. On looking at the list, it looks like that  
3 did not come in. I didn't want to have them open  
4 up one and expect to see a covering.

5 MR. KELLY: Your Honor, I understand all the  
6 exhibits which are photos will simply say, photos.

7 THE COURT: I'm going to ask the clerk to make  
8 a redacted list so everyone can look at it again.  
9 It appears you're requesting without agreed  
10 language. I think that's the appropriate way to do  
11 it.

12 MR. KELLY: Thank you.

13 THE COURT: Counsel, another thing on the  
14 record here. Please be seated, if you wish, there.  
15 As I was leaving yesterday, the clerk believed --  
16 well, I'm not saying these clerks or who in the  
17 clerk's office had this view. But it was the view  
18 that the exhibits needed to be brought back in and  
19 locked up. But I just don't think that's at all  
20 practicable or practical. The jurors are probably  
21 putting them -- I don't know what they're doing.  
22 But I can imagine they might be putting them in  
23 piles as they are considering them or whatever.

24 I think the exhibits need to stay secure  
25 in the jury room. And I don't -- and if that's a

1 procedure of the clerk's office -- and it's not all  
2 that common to have a jury go into deliberations  
3 the next day. It happens. But I think the  
4 exhibits have to stay in the jury room.

5 MR. KELLY: I agree.

6 THE COURT: Ms. Polk?

7 MS. POLK: The state agrees.

8 THE COURT: Okay. So that's ordered that the  
9 exhibits will remain with the jury during  
10 deliberations. And, of course, they won't be  
11 removed.

12 MS. POLK: And, Your Honor, are we going to  
13 look at an exhibit list again before lunch?

14 THE COURT: I don't know -- if I can get an  
15 estimate. I want to be thinking -- it's really up  
16 to you. I mean, I'd like it to go to the jurors as  
17 soon as possible. The clerks are estimating 20  
18 minutes.

19 MS. POLK: We can do that.

20 (Recess.)

21 THE COURT: I have the revised list. And I  
22 want to make sure the attorneys had a chance to  
23 look at it, see if there are any objections to this  
24 going to the jury.

25 Ms. Polk?

1 MS. POLK: No, Your Honor. I see nothing at  
2 this point.

3 THE COURT: Mr. Kelly?

4 MR. KELLY: Judge, we've had a chance to  
5 review it. We have no objection.

6 THE COURT: I think I would have 12 copies.  
7 They might as well each have one.

8 Do the parties agree on that?

9 MR. KELLY: That's fine.

10 THE COURT: Here's the final. I'm going to  
11 double-check. It's the one that does refer to  
12 Sedona Airport and Cottonwood public works. I have  
13 these other drafts.

14 Counsel, do you want to submit these two  
15 as part of the record, the ones that were  
16 submitted, the proposed ones that have been  
17 revised?

18 MR. KELLY: Sure.

19 MS. POLK: Yes, Your Honor.

20 THE COURT: I just drew a line through the  
21 front just so they didn't get mixed in with the  
22 revised copy. Okay. Then if there is nothing  
23 else, we'll be in recess.

24 I should make a record. I noticed  
25 Mr. Li, Mr. Kelly were here and Ms. Polk. Mr. Ray

1 was not. And I wanted to make sure, if that's the  
2 case, if there was going to be a waiver of  
3 appearance.

4 MR. KELLY: There is.

5 THE COURT: The defense has waived Mr. Ray's  
6 appearance for this clerical matter. Thank you.

7 MR. LI: Thank you, Your Honor.

8 (Recess.)

9 (Proceedings continued in the presence of  
10 jury.)

11 THE COURT: The record will show the presence  
12 of Mr. Ray, the attorneys, and the jury.

13 Ladies and gentlemen, has the jury  
14 reached a verdict?

15 JURY FOREMAN: We have.

16 THE COURT: And, Juror No. 10, you are the  
17 foreperson or foreman?

18 JURY FOREMAN: Yes, Judge.

19 THE COURT: If you would please hand the  
20 verdict forms to the bailiff, she will bring them  
21 to me.

22 The clerk will read and record the  
23 verdicts.

24 THE CLERK: In the Superior Court of the State  
25 of Arizona, in and for the County of Yavapai, State

1 of Arizona, plaintiff, versus James Arthur Ray,  
2 defendant, V1300CR201080049, Verdict Count I: We,  
3 the jury, duly empaneled and sworn in the  
4 above-entitled action, and upon our oaths do find  
5 the defendant, James Arthur Ray, on the offense of  
6 manslaughter as a result of the death of Kirby  
7 Brown as follows: Not guilty. If you find the  
8 defendant --

9 THE COURT: Go ahead.

10 THE CLERK: We, the jury, duly empaneled and  
11 sworn in the above-entitled action, and upon our  
12 oaths do find the defendant, James Arthur Ray, on  
13 the offense of negligent homicide as a result of  
14 the death of Kirby Brown as follows: Guilty. The  
15 above is the unanimous finding of the jury, signed  
16 foreman of the jury.

17 Verdict Count II: Caption omitted. We,  
18 the jury, duly empaneled and sworn in the  
19 above-entitled action, upon our oaths do find the  
20 defendant, James Arthur Ray, on the offense of  
21 manslaughter as a result of the death of Lizbeth  
22 Neuman as follows: Not guilty.

23 We, the jury, duly empaneled and sworn in  
24 the above-entitled action, and upon our oaths do  
25 find the defendant, James Arthur Ray, on the

1 offense of negligent homicide as a result of the  
2 death of Lizbeth Neuman as follows: Guilty. The  
3 above is the unanimous finding of the jury, signed  
4 foreman of the jury.

5 Verdict Count III, caption omitted. We,  
6 the jury, duly empaneled and sworn in the  
7 above-entitled action, and upon our oaths do find  
8 the defendant, James Arthur Ray, on the offense of  
9 manslaughter as a result of the death of James  
10 Shore as follows: Not guilty.

11 We, the jury, duly empaneled and sworn in  
12 the above-entitled action, and upon our oaths do  
13 find the defendant, James Arthur Ray, on the  
14 offense of negligent homicide as a result of the  
15 death of James Shore as follows: Guilty. The  
16 above is the unanimous finding of the jury, signed  
17 foreman of the jury.

18 Members of the jury, is this -- are these  
19 your true and correct verdicts?

20 JURY FOREMAN: Yes.

21 THE COURT: If I can have a response from all  
22 jurors.

23 JURY PANEL: Yes.

24 THE COURT: Counsel, do you wish to have the  
25 jury polled?

1 Ms. Polk?

2 MS. POLK: No, Your Honor. Thank you.

3 MR. KELLY: Please, Judge.

4 THE COURT: Members of the jury, you will each  
5 be asked a series of question by the clerk. Answer  
6 each of these questions yes or no.

7 And, of course, by number only.

8 THE CLERK: Juror No. 1, are these your true  
9 and correct verdicts as to Count I, Count II and  
10 Count III?

11 THE COURT: Each count separately.

12 THE CLERK: I'm sorry.

13 Juror No. 1, is this your true and  
14 correct verdict as to Count I?

15 JUROR NO. 1: Yes.

16 THE CLERK: Juror No. 1, is this your true and  
17 correct verdict as to Count II?

18 JUROR NO. 1: Yes.

19 THE CLERK: Juror No. 1, is this your true and  
20 correct verdict as to Count III?

21 JUROR NO. 1: Yes.

22 THE CLERK: Juror No. 3, is this your true and  
23 correct verdict as to Count I?

24 JUROR NO. 3: Yes.

25 THE CLERK: Juror No. 3, is this your true and

1 correct verdict as to Count II?

2 JUROR NO. 3: Yes.

3 THE CLERK: Juror No. 3, is this your true and  
4 correct verdict as to Count III?

5 JUROR NO. 3: Yes.

6 THE CLERK: Juror No. 4, is this your true and  
7 correct verdict as to Count I?

8 JUROR NO. 4: Yes.

9 THE CLERK: Juror No. 4, is this your true and  
10 correct verdict as to Count II?

11 JUROR NO. 4: Yes.

12 THE CLERK: Juror No. 4, is this your true and  
13 correct verdict as to Count III?

14 JUROR NO. 4: Yes.

15 THE CLERK: Juror No. 5, is this your true and  
16 correct verdict as to Count I?

17 JUROR NO. 5: Yes.

18 THE CLERK: Juror No. 5, is this your true and  
19 correct verdict as to Count II?

20 JUROR NO. 5: Yes.

21 THE CLERK: Juror No. 5, is this your true and  
22 correct verdict as to Count III?

23 JUROR NO. 5: Yes.

24 THE CLERK: Juror No. 6, is this your true and  
25 correct verdict as to Count I?

1 JUROR NO. 6: Yes.  
 2 THE CLERK: Juror No. 6, is this your true and  
 3 correct verdict as to Count II?  
 4 JUROR NO. 6: Yes.  
 5 THE CLERK: Juror No. 6, is this your true and  
 6 correct verdict as to Count III?  
 7 JUROR NO. 6: Yes.  
 8 THE CLERK: Juror No. 10, is this your true  
 9 and correct verdict as to Count I?  
 10 JUROR NO. 10: Yes.  
 11 THE CLERK: Juror No. 10, is this your true  
 12 and correct verdict as to Count II?  
 13 JUROR NO. 10: Yes.  
 14 THE CLERK: Juror No. 10, is this your true  
 15 and correct verdict as to Count III?  
 16 JUROR NO. 10: Yes.  
 17 THE CLERK: Juror No. 11, is this your true  
 18 and correct verdict as to Count I?  
 19 JUROR NO. 11: Yes.  
 20 THE CLERK: Juror No. 11, is this your true  
 21 and correct verdict as to Count II?  
 22 JUROR NO. 11: Yes.  
 23 THE CLERK: Juror No. 11, is this your true  
 24 and correct verdict as to Count III?  
 25 JUROR NO. 11: Yes.

1 THE CLERK: Juror No. 12, is this your true  
 2 and correct verdict as to Count I?  
 3 JUROR NO. 12: Yes.  
 4 THE CLERK: Juror No. 12, is this your true  
 5 and correct verdict as to Count II?  
 6 JUROR NO. 12: Yes.  
 7 THE CLERK: Juror No. 12, is this your true  
 8 and correct verdict as to Count III?  
 9 JUROR NO. 12: Yes.  
 10 THE CLERK: Juror No. 13, is this your true  
 11 and correct verdict as to Count I?  
 12 JUROR NO. 13: Yes.  
 13 THE CLERK: Juror No. 13, is this your true  
 14 and correct verdict as to Count II?  
 15 JUROR NO. 13: Yes.  
 16 THE CLERK: Juror No. 13, is this your true  
 17 and correct verdict as to Count III?  
 18 JUROR NO. 13: Yes.  
 19 THE CLERK: Juror No. 15 -- 14. Excuse me.  
 20 Juror No. 14, is this your true and correct verdict  
 21 as to Count I?  
 22 JUROR NO. 14: Yes.  
 23 THE CLERK: Juror No. 14, is this your true  
 24 and correct verdict as to Count II?  
 25 JUROR NO. 14: Yes.

1 THE CLERK: Juror No. 14, is this your true  
 2 and correct verdict as to Count III?  
 3 JUROR NO. 14: Yes.  
 4 THE CLERK: Juror No. 15, is this your true  
 5 and correct verdict as to Count I?  
 6 JUROR NO. 15: Yes.  
 7 THE CLERK: Juror No. 15, is this your true  
 8 and correct verdict as to Count II?  
 9 JUROR NO. 15: Yes.  
 10 THE CLERK: Juror No. 15, is this your true  
 11 and correct verdict as to Count III?  
 12 JUROR NO. 15: Yes.  
 13 THE CLERK: And, Juror No. 18, is this your  
 14 true and correct verdict as to Count I?  
 15 JUROR NO. 18: Yes.  
 16 THE CLERK: Juror No. 18, is this your true  
 17 and correct verdict as to Count II?  
 18 JUROR NO. 18: Yes.  
 19 THE CLERK: Juror No. 18, is this your true  
 20 and correct verdict as to Count III?  
 21 JUROR NO. 18: Yes.  
 22 THE COURT: Counsel, do either of you --  
 23 either side wish to have any further record on  
 24 polling of the jury?  
 25 Ms. Polk?

1 MS. POLK: No, Your Honor. Thank you.  
 2 THE COURT: Mr. Kelly?  
 3 MR. KELLY: No, sir.  
 4 THE COURT: Ladies and gentlemen, your duties  
 5 as jurors are not complete at this time. There is  
 6 still some additional juror work that has to be  
 7 done. It's not going to continue today, however.  
 8 The admonition remains fully in effect just as it  
 9 has throughout the trial. You cannot talk about  
 10 the case even among yourselves now outside of any  
 11 possible further deliberation. You cannot do that.  
 12 So you must follow all aspects of the admonition.  
 13 And the other aspect of the trial is  
 14 going to resume next Tuesday, June 28, at 9:15.  
 15 I'll ask that you assemble at that time. So  
 16 remember the admonition. And you're still under it  
 17 completely. And the other aspect of the trial will  
 18 resume, then, on June 28, Tuesday, 9:15.  
 19 Counsel, before I dismiss the jury at  
 20 this time, any further record?  
 21 Ms. Polk?  
 22 MS. POLK: Not at this time, Your Honor. I do  
 23 have a matter to take up with the Court outside the  
 24 presence of the jury.  
 25 THE COURT: Okay.

1 Mr. Kelly, Mr. Li, anything further right  
2 now?

3 MR. KELLY: No, Judge.

4 THE COURT: Okay. Thank you.

5 You are excused for a recess.

6 And I'm asking the parties to remain.

7 Thank you.

8 (Proceedings continued outside presence  
9 of jury.)

10 THE COURT: The record will show that the jury  
11 has left the courtroom.

12 Ms. Polk, you wanted to address the  
13 Court?

14 MS. POLK: Your Honor, in light of the  
15 verdict, the state asks that the defendant be taken  
16 into custody pursuant to Rule 7.2 at this time.  
17 7.2(c)(1) provides that after a person has been  
18 convicted of any offense for which the person will  
19 in all reasonable probability suffer a sentence of  
20 imprisonment, the person shall not be released on  
21 bail or on the person's own recognizance unless --  
22 and there is a few items listed that would not  
23 apply in this case.

24 So pursuant to this rule, the state asks  
25 that the defendant be taken into custody at this

1 time.

2 THE COURT: Response by the defense?

3 MR. KELLY: Judge, I believe the request is  
4 premature. There is no basis upon which to provide  
5 an opinion to this court that there is a reasonable  
6 probability that Mr. Ray would be incarcerated  
7 either today or after any of the future sentencing  
8 phase until the Court has all of the relevant  
9 information in regards to what an appropriate  
10 sentence is.

11 I remind the Court or state the obvious,  
12 that these are probation-available offenses. My  
13 client has no prior convictions whatsoever. And  
14 you heard mitigation at a bail hearing. I would  
15 incorporate all that information.

16 Finally, Judge, he has appeared at each  
17 and every court proceeding as ordered. We're  
18 anxious to continue with our miniportion of this  
19 trial and convince this court that probation is the  
20 appropriate sentence.

21 THE COURT: Ms. Polk, anything further?

22 MS. POLK: No, Your Honor. Thank you.

23 THE COURT: I'm going to confirm the existing  
24 conditions of release at this time, confirm that  
25 the other aspect of the trial, as I've been

1 referring to it, would resume Tuesday at 9:15.

2 I'll ask the attorneys to be -- the parties to be  
3 present at 8:30 next Tuesday.

4 And note that there was a pending motion  
5 for mistrial. That motion is denied. It's denied,  
6 effectively, in any event. That was technically  
7 still pending.

8 Ms. Polk, any further matters for the  
9 record right now?

10 MS. POLK: No, Your Honor. Thank you.

11 THE COURT: Mr. Kelly?

12 MR. KELLY: Judge, I have one additional  
13 question. I'm making an assumption based on prior  
14 representations that the next phase, the  
15 aggravation phase, is approximately two days in  
16 length. But could we receive some confirmation as  
17 to the number of witnesses, disclosure of their  
18 names and the length of trial.

19 THE COURT: Ms. Polk, that's what I -- you  
20 indicated two days. And I was thinking June 28 and  
21 29.

22 MS. POLK: And, Your Honor, we will as soon as  
23 we can, provide to the defense the witnesses that  
24 we intend to call.

25 THE COURT: Okay. And the other thing is --

1 well, if there is scheduling things the parties can  
2 work out. Otherwise, in just saying the 28th and  
3 29th, if the parties want to propose something, I  
4 would consider that. But for now just resume at  
5 the regular trial time.

6 Anything further?

7 MS. POLK: No, Your Honor. Thank you.

8 MR. KELLY: I'm not sure. Is that --

9 THE COURT: And provide -- as soon as possible  
10 how about at least a number? Do you have the  
11 number of witnesses you anticipate, Ms. Polk?

12 MS. POLK: Your Honor, I need to give a little  
13 bit of thought. We will provide -- we just need a  
14 couple of hours to firm it up. We'll get it to the  
15 Court and counsel as soon as possible.

16 THE COURT: That's something -- I was assuming  
17 that could happen today. Mr. Kelly would like that  
18 confirmed. And that's going to happen by  
19 5:00 o'clock.

20 MS. POLK: We can do that, Your Honor.

21 MR. KELLY: And I understand two days is the  
22 estimated length?

23 MS. POLK: As soon as we nail down the number  
24 of witnesses by the end of today, we will allow  
25 ourselves to give an estimate as to time.



1 THE COURT: I'm sorry to interrupt. I was  
2 looking at two days. I'll state that.

3 But, Ms. Polk, you've indicated you would  
4 provide this information to the defense this  
5 afternoon?

6 MS. POLK: Yes, Your Honor.

7 THE COURT: Mr. Kelly?

8 MR. KELLY: Thank you.

9 THE COURT: We'll be in recess.

10 (The proceedings concluded.)  
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1 STATE OF ARIZONA )  
2 COUNTY OF YAVAPAI ) ss: REPORTER'S CERTIFICATE  
3

4 I, Mina G. Hunt, do hereby certify that I  
5 am a Certified Reporter within the State of Arizona  
6 and Certified Shorthand Reporter in California

7 I further certify that these proceedings  
8 were taken in shorthand by me at the time and place  
9 herein set forth, and were thereafter reduced to  
10 typewritten form, and that the foregoing  
11 constitutes a true and correct transcript.

12 I further certify that I am not related  
13 to, employed by, nor of counsel for any of the  
14 parties or attorneys herein, nor otherwise  
15 interested in the result of the within action.

16 In witness whereof, I have affixed my  
17 signature this 13th day of July, 2011  
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24 MINA G HUNT, AZ CR No 50619  
25 CA CSR No 8335

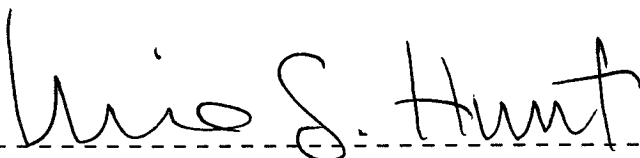
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